

TUESDAY, NOVEMBER 12, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

## **SECOND DISTRICT OFFICE PHOTOGRAPH**

A staff photograph of the Second District Board Member's office was taken. The picture consisted of Board Member Dean Andal, Paul Steinberg, Ann Jordan, Donna Sotelo, Theresa Goehring, Aulaina Hansen, Joan Armenta-Roberts and Victoria Calderia.

The Board recessed at 9:35 a.m. and reconvened at 10: 50 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

## **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES APPEALS HEARINGS**

Thomas B. Allen, 144126

1986, \$14,366.00 Tax

\$1,436.60 Penalty

1987, \$3,471.00 Tax

\$867.65 Penalty

For Appellant:

No Appearance

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Action: The Board took no action.

Gwilliam, Ivary, Chiosso, Cavalli & Brewer, 118821

1994, \$62,775.21 Assessment

1995, \$350,488.76 Assessment

For Appellant:

Robert W. Wood, Attorney

Sherill Smothers, Witness

Gary Gwilliam

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: With respect to that portion of the funds in appellant's client trust account attributable to attorneys' fees in the McClelland case, whether or not appellant has established that, prior to January 1, 1995, either: (a) the amount of such fees were not yet determinable or fixed in amount; or (b) there existed substantial limitation and restriction as to appellant's control and receipt of such funds.

With respect to that portion of the funds in appellant's client trust account attributable to attorneys' fees in the Smothers case, whether or not appellant has established that, prior to January 1, 1996, either: (a) the amount of such fees were not yet determinable or fixed in amount; or (b) there existed substantial limitations and restrictions as to appellant's control and receipt of such funds.

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Appellant's Exhibit: Statement of Account dated 1/2/96 (Exhibit 11.1)  
Memorandum dated 12/29/94 (Exhibit 11.2)  
Declaration of Kikuo Nakahara (Exhibit 11.3)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

Exhibits to these minutes are incorporated by reference.

**Carl E. and Mary Ann Berg, 154075**

1995, \$206,317.00 Assessment

**Clyde J. Berg, 154076**

1995, \$206,318.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Renel Sapiandante, Tax Counsel

Action: The Board took no action.

**Charles Bruce Kelley, 150783**

1993, \$18,430.00 Assessment

For Appellant:

No Appearance

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Action: The Board took no action.

### **PROPERTY TAXES APPEAL HEARING**

**Yolo Shortline Railroad Company (898), 183735**

2002, \$449,686.00 Unitary Value

For Petitioner:

No Appearance

For Property and Special Taxes Department:

Paul Steinberg, Counsel

Action: The Board took no action.

### **BUSINESS TAXES APPEAL HEARING**

**Costco Wholesale Membership Co., 132058**

12-25-00 to 3-18-01, \$10,000.00 Tax

For Claimant:

Joseph A. Vinatieri, Attorney

Richard Galanti, CFO

Jeff Van Burkleo, Tax Director

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether claimant is entitled to a refund on self-assessed taxes for membership fees at its California stores imposed due to claimant's two-tier pricing at its internet website.

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Whether claimant's assertion that it received and relied on erroneous advice from the Board warrants a refund of the tax.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:50 a.m. and reconvened at 2:00 p.m. with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

### **BUSINESS TAXES APPEALS HEARINGS**

**Daniel W. Green and Sharon Louise Green, 139248**

7-1-97 to 6-30-00, \$7,539.82 Tax

For Petitioner: Sharon L. Green

For Sales and Use Tax Department: Robert D. Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether taxpayers received and relied upon oral misinformation regarding wood shavings and similar products.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Lewis Shingle Company, Inc, 115008**

7-1-97 to 6-30-00, \$4,159.08 Tax

For Petitioner: Ronald G. Peck, Attorney

Terry Lewis, President

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether petitioner's claimed sales for resale to Coast Roofing Supply, totaling \$50,412.00, were properly disallowed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments.

**Bay Area Truck Services, Inc., 130650**

1-1-99 to 3-31-99, \$717.75 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: Bruce Emard, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the vehicle at issue was used by petitioner for personal and business reasons following issuance of a resale certificate to the seller.

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Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**Oded Cohen, 28177**

5-25-93 to 12-31-96, \$31,491.53 Tax

\$3,444.29 Penalty, Negligence

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that the audited markups are excessive.  
Whether sufficient allowance has been given for accessory items given away as part of the sales of pagers and cellular phones.

Whether the evidence establishes that the costs of sales are excessive.

Whether petitioner has provided sufficient evidence to warrant an adjustment for claimed and/or netted nontaxable sales for resale.

Whether an adjustment for bad debts is warranted.

Whether relief from the penalty for negligence is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Mr. Parrish moved to delete the 10 percent negligence penalty. The motion failed for lack of a second.

**FINAL ACTION ON PETITION HEARD NOVEMBER 12, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the petition of *Costco Wholesale Membership Co., 132058*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Daniel W. Green and Sharon Louise Green, 139248*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 2:45 p.m.

*The foregoing minutes are adopted by the Board on February 6, 2003.*